

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-280-C - ORDER NO. 2005-412
AUGUST 1, 2005

IN RE:	Application of Time Warner Cable)	ORDER RULING ON
	Information Services (South Carolina), LLC)	EXPANSION OF
	d/b/a Time Warner Cable to Amend its)	CERTIFICATE
	Certificate of Public Convenience and)	
	Necessity to Provide Interexchange and Local)	
	Voice Services in Service Areas of Certain)	
	Incumbent Carriers who Currently have a)	
	Rural Exemption.)	

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Time Warner Cable Information Services (South Carolina), LLC, d/b/a Time Warner Cable (TWCIS) to amend the Certificate of Public Convenience and Necessity issued to TWCIS by the Commission in Order No. 2004-213 in Docket No. 2003-362-C. By its Application, TWCIS seeks to provide interexchange and local voice services in the service areas of the following incumbent local exchange carriers: Farmers Telephone Cooperative, Inc. (Farmers); Fort Mill Telephone Company, d/b/a Comporium Communications, Inc. (Fort Mill); Home Telephone Company, Inc. (Home); PBT Telecom, Inc. (PBT); and St. Stephen Telephone Company (St. Stephen) (collectively, the rural incumbent local exchange carriers or RLECs). Each of the RLECs

has a rural company exemption pursuant to Section 251(f)(1) of the Federal Telecommunications Act of 1996.

A public hearing was held in this matter on March 31, 2005. TWCIS was represented by Frank R. Ellerbe, III, Esquire and Bonnie D. Shealy, Esquire. TWCIS presented the direct and rebuttal testimony of Julie Y. Patterson. The RLECs and the Intervenor South Carolina Telephone Coalition (SCTC) were represented by M. John Bowen, Jr., Esquire and Margaret M. Fox, Esquire. These parties presented the direct testimony of Emmanuel Staurulakis and H. Keith Oliver. The Office of Regulatory Staff (ORS) was represented by Benjamin P. Mustian, Esquire. ORS did not present a witness.

The opening statement by counsel for TWCIS is significant. Mr. Ellerbe stated that, although TWCIS is asking in this case to extend its certification into the areas served by the RLECs, it is not asking to set aside the RLECs' rural exemption under the Telecommunications Act of 1996. What TWCIS is asking is that this Commission extend the Company's already existing certificate to the RLECs' areas, so that it can propose interconnection agreements to those companies. Tr. at 7-8. This is the crux of TWCIS's ultimate case as presented, and it varies significantly from the original Application submitted. The testimony of the witnesses is summarized below.

II. SUMMARY OF TESTIMONY

Julie Y. Patterson, Vice-President and Chief Counsel, Telephony for Time Warner Cable, testified on behalf of TWCIS. Ms. Patterson described the Company's corporate structure, presented evidence on the financial, technical and managerial abilities of TWCIS, and discussed the proposed expansion of TWCIS' certificated

authority. She testified that TWCIS currently provides to its customers “features similar to those offered by traditional analog telephone service but utilizes IP technology to transport telephone calls.” Tr. at 15. Ms. Patterson opined that the Federal Communications Commission’s decision in a case involving Vonage Holdings Corporation and the Minnesota Public Utilities Commission preempts this Commission from imposing certification and tariffing requirements with respect to certain VoIP services, and, therefore, TWCIS intends to withdraw the retail voice services in its current tariff once a new non-regulated entity is created to provide the retail voice services currently being offered by TWCIS. Tr. at 16. *See In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, released November 12, 2004 (the Vonage Order). TWCIS intends to remain a certificated carrier and plans to obtain interconnection services from incumbent LECs and eventually offer wholesale services to the newly created non-regulated entity, according to Ms. Patterson.

Emmanuel Staurulakis, President of John Staurulakis, Inc. (JSI), a telecommunications consulting firm, testified on behalf of the RLECs and SCTC. Mr. Staurulakis testified that the Vonage Order does not preempt the authority of the Commission to act upon TWCIS’ request to expand its certificated authority to include areas served by the rural LECs. Tr. at 136. Mr. Staurulakis asked the Commission to deny the application for expanded authority, given the potential adverse impact that TWCIS’ VoIP service offering may have on the availability of affordable local exchange service

to all rural telecommunications customers in the State. Tr. at 135. Mr. Staurulakis testified regarding the differences between TWCIS' proposed VoIP service and the service at issue in the Vonage case. See Tr. at 137; 154-157. Mr. Staurulakis further stated that it was not clear to him what TWCIS is seeking from the Commission at this proceeding. In addition, the witness states that this Commission should deny the requested authority because TWCIS has failed to meet the state public interest standard.

H. Keith Oliver, Vice-President of Finance for Home Telephone Company also testified for the RLECs and SCTC. Mr. Oliver asked the Commission to deny TWCIS' request to expand its certificated authority to provide service in five additional areas served by the RLECs because it is not in the public interest and because of its adverse impact on the availability of affordable local exchange service. Tr. at 181. Mr. Oliver pointed out that, while TWCIS suggests that it will compensate other carriers and comply with Commission regulations regarding contributions to the State USF and other requirements, it has only agreed to do so until issues involving IP-enabled services are resolved at the Federal level, and has only agreed to comply with "applicable" regulations while continuing to maintain that the service it seeks to provide is non-regulated and that none of the Commission's regulations apply to TWCIS. Tr. at 185, 194. Mr. Oliver stated that TWCIS' request should be denied, given the uncertainty in this area and the potentially devastating impact it could have on customers in rural areas if a carrier is permitted to provide service and later stops compensating other carriers for use of the Public Switched Telephone Network (PSTN). Tr. at 185.

III. DISCUSSION

Time-Warner's position in this case is confusing, to say the least. The original Application in this matter sought authority to expand its existing Certificate to directly serve customers in the RLECs' various service areas. At the hearing, however, the oral argument and testimony was to the effect that TWCIS intended to negotiate interconnection agreements with the RLECs subsequent to expanded certification and then provide services as a wholesaler to a Time-Warner non-regulated subsidiary, who would then serve the proposed areas. Further, TWCIS' attorney states that the Company is not seeking a waiver of the rural exemptions of the RLECs subject to the Telecommunications Act of 1996. We believe that this last position leaves us with very little choice as to how to rule in this matter.

Since, as amended at the hearing, the rural exemptions of the RLECs are not at issue in this case, we cannot waive those exemptions. Thus, there is a failure of proof regarding the original application. Accordingly, we must deny the Application for expansion of the Certificate as originally filed by the Company.

With regard to the Application as amended during the hearing, the Company seeks only the authority to enter into negotiations toward interconnection agreements with the local exchange companies under the rural exemption. This Commission already considers the Company to possess the ability to enter into these negotiations under Section 251 of the Telecommunications Act of 1996. No expanded Certificate is needed. The Commission recognizes this ability, and the Company may enter into such negotiations without further approval of this Commission.

Obviously, this Order should not be construed as a ruling on the waiver of the rural exemptions in this case, since this issue was not before the Commission.

Lastly, with regard to Time-Warner's late-filed Exhibit No. 1, we believe that we should admit the Exhibit into the evidence of this case, but we hereby note in the record of the proceeding the rural LEC's objection to the exhibit as stated by the rural LECs.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Application of TWCIS originally sought an expanded Certificate of Public Convenience and Necessity to serve the service areas of the denominated rural local exchange carriers. At the hearing, TWCIS stated its desire to possess the expanded certificate so that it could enter into interconnection agreements with the rural LECs, and then serve a non-regulated Time-Warner subsidiary as a wholesaler. No expansion of the Company's Certificate is needed for it to enter into negotiations with the RLECs. The Company possesses this ability as a telecommunications carrier under Section 251 of the Telecommunications Act of 1996 and no further blessing of this Commission is needed for this undertaking.

2. The status of the RLECs rural exemptions is not before this Commission, so this Order should not be construed as ruling on a waiver of the rural exemptions.

3. The original Application of the Company must be denied as moot based on representations made at the hearing and, therefore, for failure of proof as to the original request.

4. Exhibit No. 1 should be admitted into the evidence of this case, subject to the stated objections of the RLECs in its May 5, 2005 letter to this Commission.

V. ORDER

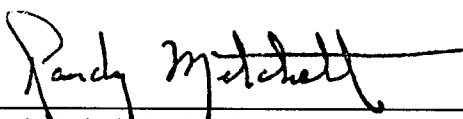
1. The original Application is denied.

2. We need not rule on the modified Application since the Company has the ability to enter into interconnection agreements without further expansion of its Certificate.

3. Exhibit No. 1 is admitted into the evidence of this case, subject to the stated objections of the RLECs.

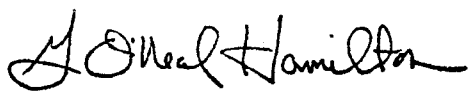
4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice Chairman

(SEAL)